

## **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

COLLEEN O'DONNELL,	)	
	)	
Plaintiff,	)	
-v-	)	CIVIL ACTION NO.
	)	04-40190-FDS
ALBERTO R. GONZALES,	)	
Attorney General,	)	
U.S. Department of Justice,	)	
	)	
Defendant.	)	

THE ORAL DEPOSITION OF CYNTHIA LORD,  
held pursuant to Notice, and the applicable provisions of  
the Federal Rules of Civil Procedure, before Marilyn  
Franklin, a Court Reporter and Notary Public, within and for  
the Commonwealth of Massachusetts, at FMC Devens,  
Ayer, Massachusetts, Massachusetts, on Friday, September 16,  
2005, commencing at 10:39 a.m.

**COPY**

**APEX Reporting**  
(617) 426-3077

**PRESENT:**

On Behalf of the Plaintiff:

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Cooley, Shrair P.C.  
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On Behalf of the Defendant:

DAMIAN W. WILMOT, ESQ.  
Assistant U.S. Attorney  
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**APEX Reporting**  
(617) 426-3077

BSA

Depo-O'Donnell V Gonzales, 04-40190-FDS - Depo of Cynthia Lordl - 09/16/05

XMAX(13/13)

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- [1] Mr.Reynoso be arrested, he be placed on immediate home duty [2] status.
- [3] Q And was Mr.Reynoso placed on immediate home duty [4] status?
- [5] A No.
- [6] Q Were there any other recommendations of the [7] Committee?
- [8] A To reconvene on Tuesday, April 9th at 9:00 a.m. to [9] further consider the incident based on how Mass State Police [10] respond?
- [11] Q And did you convene on April 9th at 9:00 a.m.?
- [12] Reconvene, I should say?
- [13] A Yes.
- [14] Q And can you now take a look at Exhibit 4 and tell [15] me what the Committee, actually, strike that.
- [16] Between the first Committee meeting and the second [17] Committee meeting, did the Committee find out that Officer [18] Reynoso had been arrested?
- [19] A I don't remember.
- [20] Q Can you read this paragraph here for the record?
- [21] A Committee reconvened on Tuesday, April 9th and was [22] informed that Mr.Reynoso was arrested on Monday, April 8th.
- [23] Q Does that refresh your memory as to whether the [24] Committee learned that Officer Reynoso had been arrested -
- [25] A Yes.

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- [1] Q On April 8th? That was a yes.
- [2] A Yes.
- [3] Q Okay. Thank you. And can you tell me what the [4] Committee recommendations were following this meeting?
- [5] A The Committee advised that since the charge [6] against Mr.Reynoso is a state felony, he would have to be [7] placed on indefinite suspension until the charges were [8] resolved.
- [9] The Committee recommending Ms.O'Donnell be [10] referred to the Employee's Assistance Program and the [11] Committee recommending Mr.Reynoso be referred to the [12] Employee's Assistance Program should he return to work.
- [13] Q And what is indefinite suspension?
- [14] A Indefinite suspension is when an employee is [15] placed on suspension for an indefinite period of time due to [16] criminal proceedings.
- [17] Q Is that the same as home duty status?
- [18] A No.
- [19] Q And is the employee paid when he is on indefinite [20] suspension?
- [21] A No.
- [22] Q And was Officer Reynoso placed on indefinite [23] suspension?
- [24] A No.
- [25] Q Do you recall that there was a Court hearing

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- [1] wherein Officer Reynoso pled to sufficient facts for a [2] finding of guilty and received a continued without a [3] finding?
- [4] A No.
- [5] Q Okay. Do you know whether, do you know whether [6] there was a Court hearing?
- [7] A No.
- [8] MS. MCDONALD: Okay. I'm going to show you the [9] document that has been marked as Exhibit 5.
- [10] (Exhibit No. 5 marked for [11] identification.)
- [12] BY MS. MCDONALD:
- [13] Q I'll ask you to take a look at that and I will ask [14] you whether you recognize that document?
- [15] Have you seen that document before?
- [16] A I've seen this first page.
- [17] Q Not the other two pages?
- [18] A I don't remember the other two pages.
- [19] Q Okay. And does that first page refresh your [20] memory as to whether there was a Court hearing regarding [21] Officer Reynoso on January 3, 2003?
- [22] A Yes.
- [23] Q Now following that Court hearing in January of [24] 2003, was the matter referred for investigation, strike [25] that. Let me rephrase that.

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- [1] Was the matter concerning April 2002 incident [2] referred for investigation?
- [3] MR. WILMOT: Objection.
- [4] THE WITNESS: I don't know.
- [5] BY MS. MCDONALD:
- [6] Q Do you know whether the investigation was [7] conducted regarding Officer Reynoso's conduct?
- [8] A Yes.
- [9] Q And who conducted that investigation?
- [10] A I don't know.
- [11] Q I am showing you two documents that were marked as [12] Winn Exhibit 6 and 7 and ask you if you could first review [13] them and let me know if you have, if you recognize either [14] one of those documents?
- [15] (Pause)
- [16] Do you recognize those documents?
- [17] A I recognize this one.
- [18] Q Okay. And which, when you say this one?
- [19] A The OIA Investigative Report.
- [20] Q And that is marked Winn Exhibit No. 7, is that [21] right?
- [22] A Yes.
- [23] Q Can you tell me what the results of the [24] investigation were?
- [25] A The charge was sustained.

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[1] THE WITNESS: Yes.  
 [2] BY MS. MCDONALD:  
 [3] Q Do you recall what that suspension was for?  
 [4] A DUI.  
 [5] Q Did Ms.O'Donnell ever express her concerns for [6] her safety regarding Officer Reynoso to you?  
 [7] A No.  
 [8] Q Do you know whether she expressed them to [9] supervisors or officials at FMC Devens?  
 [10] A Yes.  
 [11] Q I'm showing you what has been marked Exhibits 15 [12] and 16 of Warden Winn's deposition and I ask you take a look [13] at those documents and let me know if you recognize them?  
 [14] (Pause)  
 [15] A Yes I have seen these before.  
 [16] Q And what are those documents?  
 [17] A Look's like memos from Colleen O'Donnell.  
 [18] Q And what are those memos regarding?  
 [19] A Safety concerns and safety issues.  
 [20] Q And can you summarize the substance of those [21] memos?  
 [22] (Pause)  
 [23] A In the May 13th, that's my summarization, feels [24] that we've done enough to protect her as she states here and [25] her safety issues in the June 10th are that either she or

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[1] Reynoso be placed on administrative leave.  
 [2] Q Were any actions taken in response to those memos [3] that you are aware of?  
 [4] A I really don't remember.  
 [5] MS. MCDONALD: Can we go off for one second?  
 [6] (Off the record at 12:25 p.m.)  
 [7] (On the record at 12:27 p.m.)  
 [8] BY MS. MCDONALD:  
 [9] Q I am going to show you what has been marked as [10] Exhibit 39 in Colleen O'Donnell's deposition and ask if you [11] recognize that document?  
 [12] A Yes.  
 [13] Q And is, Exhibit 39 is dated January 8, 2003 and [14] that is assigning Ms.O'Donnell to her regular ISN duties, [15] right?  
 [16] A That is correct.  
 [17] Q And what are the hours of her new duties?  
 [18] A 9:30 a.m. to 6:00 p.m.  
 [19] Q And you testified that Ms.Swiderski was in your [20] department at that time, is that right?  
 [21] A Yes.  
 [22] Q And do you recall whether Ms.Swiderski told you [23] about a meeting with Ms.O'Donnell where she refused to sign [24] that document?  
 [25] A No, I don't recall.

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[1] Q Okay. Did you become aware that Colleen had sent [2] a doctor's note indicating that she could not work in [3] January of 2003?  
 [4] A Yes.  
 [5] Q I am showing you what has been marked Exhibit 27 [6] in Warden Winn's deposition and ask you whether that's the [7] note that was received from Ms.O'Donnell from her doctor [8] indicating her inability to work?  
 [9] A Yes.  
 [10] Q Can you tell me in substance what that note says?  
 [11] A That she is totally disabled, unable to work her [12] current job under the current circumstances. If her [13] assailant was removed from the work premises, she would be [14] able to work full-time without restrictions.  
 [15] Q And does that note state that she was diagnosed [16] with post traumatic stress disorder?  
 [17] A Yes ma'am.  
 [18] Q And does that note state that Ms.O'Donnell's [19] condition is reversible?  
 [20] A It doesn't say those words.  
 [21] Q Well, it says she would be able to return to work [22] without restrictions if Officer Reynoso was not on the [23] premises, right?  
 [24] A That is correct.  
 [25] Q But it does not state that her post traumatic

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[1] stress disorder is reversible, is that right?  
 [2] A That is correct.  
 [3] Q Does it say that Officer Reynoso should be [4] terminated?  
 [5] A No.  
 [6] Q What actions were taken as a result of the receipt [7] of that doctor's note?  
 [8] A Warden Winn wanted further clarification on her [9] medical status.  
 [10] Q And did he direct you to do anything in that [11] regard?  
 [12] A Yes. I prepared a letter to Ms.O'Donnell to [13] request information from her physician.  
 [14] Q I am showing you what has been marked Exhibit 42 [15] in Colleen O'Donnell's deposition and ask you to review that [16] and let me know if that is the letter that you prepared to [17] Ms.O'Donnell?  
 [18] A Yes it is.  
 [19] Q And what is page 2 of that document?  
 [20] A It's a release from Ms.O'Donnell to her physician [21] for her physician to speak with one of our or to provide [22] information to one of our agency reps.  
 [23] Q Okay. And doesn't that release also ask her [24] physician to provide any information concerning her medical [25] history?

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[1] MR. WILMOT: Objection. You can answer.  
 [2] THE WITNESS: She was not granted administrative  
 [3] leave.  
 [4] BY MS. MCDONALD:  
 [5] Q Okay. And she had been denied voluntary leave or  
 [6] found not eligible for the Voluntary Leave Transfer Program,  
 [7] right?  
 [8] A Correct.  
 [9] Q And we, you testified earlier that she had been [10] denied  
 leave without pay.  
 [11] Correct?  
 [12] A Correct.  
 [13] Q And she had exhausted her annual and sick leave.  
 [14] Is that right?  
 [15] A I believe so. It states here, yes.  
 [16] Q Is there any other leave that I am missing that [17] she  
 could have applied for?  
 [18] A She could have applied for them again with proper  
 [19] documentation.  
 [20] Q Okay. So Ms.O'Donnell was placed on AWOL status  
 [21] on February 3, 2003. Do you -- if I represent that to you,  
 [22] does that purport with your memory?  
 [23] A I don't remember the exact date.  
 [24] Q Okay. Now this whole timeframe that we've  
 [25] discussing, is this the first time that Ms.O'Donnell was

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[1] AWOL?  
 [2] A I don't know.  
 [3] Q Do you know whether she was absent without leave [4] on  
 two occasions?  
 [5] A I have, I have no recollection.  
 [6] MS. MCDONALD: Okay. Can we go off the record?  
 [7] (Whereupon, a luncheon recess was taken at 1:14 p.m.)

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[1] AFTERNOON SESSION  
 [2] (2:03 p.m.)  
 [3] BY MS. MCDONALD:  
 [4] Q At some point, did the BLP receive notice that [5] Colleen  
 wanted to return to work?  
 [6] MR. WILMOT: Objection. You can answer.  
 [7] MS. MCDONALD: Do you need some context to that  
 [8] question?  
 [9] THE WITNESS: Yes, please.  
 [10] BY MS. MCDONALD:  
 [11] Q I'm sorry. It made sense if we hadn't stopped. [12] Okay,  
 prior to the lunch break, we were discussing [13] Ms.O'Donnell's  
 absence from work and the fact that she was [14] AWOL.  
 [15] Do you recall that?  
 [16] A Yes.  
 [17] Q And after some period of time which I will [18] represent  
 to you was February 3, 2003 through June 10 of [19] 2003, do you  
 recall that Ms.O'Donnell wanted to return to [20] work?  
 [21] A Yes.  
 [22] Q And did she provide a doctor's notice in order to  
 [23] facilitate her return?  
 [24] A I don't remember.  
 [25] (Exhibits No. 12 and 13 marked for

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[1] identification.)  
 [2] BY MS. MCDONALD:  
 [3] Q I am going to show you two documents which have  
 [4] been marked Exhibits 12 and 13 and ask you take a look at  
 [5] them.  
 [6] Do you recognize those documents?  
 [7] A Yes.  
 [8] Q Can you describe them please?  
 [9] A There's a letter from Sam Rizzitelli indicating [10] that  
 there's correspondence Colleen's treating physician  
 [11] authorizing her to return to work and then him requesting  
 [12] pertinent information regarding Mr.Reynoso and a copy of  
 [13] the restraining order which is renewed and awaiting the  
 [14] reply.  
 [15] Q Which exhibit were you just describing?  
 [16] A 13.  
 [17] Q And can you describe Exhibit 12 please?  
 [18] A It's from Dr.Milowe, George Milowe, M.D. re: [19] Colleen  
 O'Donnell. Saw this patient today in the office. [20] She is now able  
 to resume her job duties, including [21] overtime.  
 [22] Q Do you know if anyone responded to Attorney  
 [23] Rizzitelli's June 4, 2003 letter?  
 [24] A I don't remember.  
 [25] MS. MCDONALD: Let me show you what has been

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- [1] Q Are the BOP's policies posted within its [2] facilities?  
 [3] A Yes they are.  
 [4] Q What is posted?  
 [5] A There's a posting in the office of special [6] counsel. It's posted. And there is the EEO process on [7] filing complaints that is posted, as well as sexual [8] harassment posting.  
 [9] Q Okay. Now where are these policies posted?  
 [10] A They're on the affirmative action bulletin board [11] by ISM and the sallyport area there, the staff lounge and [12] medical.  
 [13] Do employees have access to these three areas that [14] you just identified?  
 [15] A Yes.  
 [16] Q Are the Bureau's policies, the ones you have  
 [17] identified already, are they written any where?  
 [18] A Yes.  
 [19] Q Where could an employee find these policies in  
 [20] written form?  
 [21] A On sallyport, from my office.  
 [22] Q When you say your office, the Employee Services?  
 [23] A The Employee Services Department, yes. And they  
 [24] are provided during annual refresher training on a yearly  
 [25] basis.

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- [1] Q What is annual refresher training?  
 [2] A Every year we have refresher training for a [3] variety of, well, we have forty hours of training that we [4] must attend which involves self-defense firearms, sexual [5] harassment training, EEO training, correctional services [6] training, disturbance control. And I'm sure I haven't - [7] inmate sentencing guidelines.  
 [8] Q We're focusing on the policies that we were [9] talking about?  
 [10] A Okay.  
 [11] Q Are those provided during the annual refresher  
 [12] training?  
 [13] A Yes.  
 [14] Q Okay. But the refresher training generally covers [15] or updates on various policies of the Bureau.  
 [16] Is that correct?  
 [17] A Affirmative action, EEO, sexual harassment, and [18] the code of conduct, ethics.  
 [19] Q Now when you say EEO, are the guidelines  
 [20] concerning when an employee must file an EEO complaint, are [21] those discussed during the annual refresher training?  
 [22] A Yes.  
 [23] Q Are the guidelines concerning filing an EEO  
 [24] complaint provided to employees in written form?  
 [25] A Yes.

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- [1] Q Okay. And at what points are employees, [2] employment here at Devens, would those, the written form of [3] the covering EEO guidelines, when would that be provided?  
 [4] A They're provided initially at hire, during [5] institutional familiarization and then annually in ART. [6] Annual Refresher Training.  
 [7] Q Okay. Do you know whether the guidelines [8] concerning the filing of an EEO complaint were provided to [9] Ms.O'Donnell?  
 [10] A Yes.  
 [11] Q Okay. Yes they were?  
 [12] A Yes they were.  
 [13] MS. MCDONALD: Okay. Mark that please. I am going to  
 [14] show you what is marked as Exhibit 25.  
 [15] (Exhibit No. 25 marked for [16] identification.)  
 [17] BY MS. MCDONALD:  
 [18] Q Can you identify that document?  
 [19] A It's an acknowledgement of receipt for program  
 [20] statement entitled Sexual Harassment Prevention Program.  
 [21] Q And who is that document executed by?  
 [22] A Mr.Reynoso.  
 [23] Q And it shows that Mr.Reynoso also received this  
 [24] program statement on what date?  
 [25] A September 28, 1998.

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- [1] Q Okay. Now at the onset of your deposition today, [2] you gave some testimony as to the background investigation [3] of Mr.Reynoso.  
 [4] Do you remember that testimony?  
 [5] A Yes.  
 [6] Q Okay. I believe Attorney McDonald asked you some  
 [7] questions about whether it was possible that something  
 [8] slipped past you concerning Mr.Reynoso's background.  
 [9] Do you remember that testimony?  
 [10] A Yes.  
 [11] Q If I can bring your attention to Exhibit, Winn [12] Exhibit No. 3. If you can turn to the second page of this [13] document. Second page. Winn Exhibit No. 3 is the [14] declaration for federal employment by Mr.Reynoso which you [15] identified earlier.  
 [16] And Ms.O'Donnell's question about whether [17] something could have slipped by concerned the arrest that [18] Mr.Reynoso identifies on this document.  
 [19] Do you see that?  
 [20] MS. MCDONALD: Ms.McDonald's question.  
 [21] THE WITNESS: McDonald.  
 [22] MR. WILMOT: I'm sorry. Let me strike the whole [23] thing. Let's start from the beginning. All right.  
 [24] BY MR. WILMOT:  
 [25] Q Exhibit 3 from Mr.Winn's deposition is the